

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB DEC. 9, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re Manufactura de Tabacos (MATASA) S.A.

---

Serial No. 75/150,300

---

Allen M. Krass, Julie A. Greenberg, and John G. Posa of  
Gifford, Krass, Groh, Sprinkle, Patmore, Anderson &  
Citkowski for applicant.

Ronald McMorrow, Trademark Examining Attorney, Law Office  
105 (Thomas G. Howell, Managing Attorney)

---

Before Seeherman, Walters and Rogers, Administrative  
Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Manufactura de Tabacos (MATASA) S.A. has filed a  
trademark application to register the mark LA CIMERA for  
"cigars."<sup>1</sup>

---

<sup>1</sup> Serial No. 75/150,300, in International Class 34, filed August  
15, 1996, based on an allegation of a bona fide intention to use  
the mark in commerce.

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d). The ground is that applicant's mark so resembles the mark CREST, previously registered for "little cigars"<sup>2</sup>, and the composite mark shown below, previously registered for "tobacco and tobacco products, namely cigars"<sup>3</sup>, that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.



Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

As a preliminary matter, we note that both the Examining Attorney's final refusal of registration and

---

<sup>2</sup> Registration No. 1,701,167 issued July 14, 1992, to Larus & Brother Company, in International Class 34.

<sup>3</sup> Registration No. 582,705, issued November 24, 1952; second renewal January 12, 1994. The mark was originally registered for a wider array of goods in class 34. It is now restricted to the goods set out in the text, above.

appeal brief clearly rely on both of the referenced registrations to support the refusal. During the pendency of this appeal, however, registration no. 1,701,167 for the mark CREST was cancelled for registrant's failure to file an affidavit or declaration of use under Section 8 of the Trademark Act, 15 U.S.C. 1058. Thus, the appeal is moot as to this registration and we limit our consideration to the composite CREST and design mark.

In a likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. Applicant's and registrant's goods are identical and neither identification contains limits as to channels of trade or classes of consumers. Therefore, we turn our consideration to the similarities between the marks, in view of the premise that "when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." **Century 21 Real Estate Corp. v. Century Life of America**, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

The Examining Attorney relies on the doctrine of foreign equivalents. He contends that "cimera" must be translated so that it can be compared with prior registrations; he has made of record excerpts defining

"cimera" from two Spanish-English dictionaries; he contends that applicant has not provided any evidence or arguments to dispute that "crest" is the English-language equivalent of "cimera"; he contends that the terms are exact synonyms; and, he distinguishes as inapposite cases relied on by applicant where foreign and English-language terms were held not confusingly similar.

Applicant contends that the Examining Attorney should not translate the term "cimera" to its English-language equivalent, because consumers of cigars would not do so, as cigars often are branded with Spanish-language marks; that even if the translation is made, "crest" has many meanings and differing connotations; that the connotation of the word "crest" in registrant's mark, because of its design element, is that of an heraldic device, whereas the intended meaning of LA CIMERA in applicant's mark is "the peak, summit, or crest as in crest of a wave"; that if applicant had intended its mark to convey an impression of an heraldic device or coat of arms it would have used the Spanish "blason"; and, that applicant's mark and registrant's mark are dissimilar in sight and sound, as well as connotation.<sup>4</sup>

---

<sup>4</sup> Most of applicant's arguments, which compare its mark with the CREST and design mark, were articulated in its response to the

In support of its arguments, applicant relies, in part, on a declaration from its president, who asserts that he is fluent in Spanish; that "LA CIMERA refers to the peak, summit or crest as in crest of a wave" and is used by applicant to suggest high quality; and, that the "Spanish term for a coat of arms or crest of that nature is BLASON."<sup>5</sup>

The doctrine of foreign equivalents dictates that, in certain circumstances, a likelihood of confusion may exist between a mark including a foreign word or term and a previously registered mark containing the English-language equivalent. **In re Perez**, 21 USPQ2d 1075 (TTAB 1991); **In re Ithaca Industries, Inc.**, 230 USPQ 702, 704 (TTAB 1986). See also **In re Atavio Inc.**, 25 USPQ2d 1361, 1363 (TTAB 1992) and cases cited therein.

We find it appropriate to consider the English meaning of LA CIMERA. Based on the record before us, there can be

---

Examining Attorney's initial office action. Applicant's request for reconsideration of the final refusal, its appeal brief, and its reply brief, repeat applicant's argument that the Examining Attorney was wrong to translate its mark. Otherwise, applicant focuses exclusively on the now-cancelled registration for the word CREST.

<sup>5</sup> Applicant also submitted, with its appeal brief, untranslated Portuguese-language news stories, contending that the stories evidence use of "cimera" in the sense of "summit", as in a summit meeting. The Examining Attorney has objected to these stories as untimely and thus we have disregarded these stories. We note that, even had we considered the stories, our decision would be no different.

no dispute that applicant's mark can be translated to mean "the crest," referring to a heraldic emblem or coat of arms.<sup>6</sup> Applicant has not rebutted the dictionary evidence that a clear meaning in Spanish for "cimera" is a crest in the nature of a heraldic emblem or coat of arms.

Similarly, the word "crest" in the cited registration connotes a heraldic emblem or coat of arms, in view of its heraldic design element.

Applicant has relied on cases where, under the totality of the circumstances, a foreign term and its English equivalent were held unlikely to create a likelihood of confusion. We find those cases inapposite. This case is more akin to **In re Perez**, *supra*, and **In re American Safety Razor Co.**, 2 USPQ2d 1459 (TTAB 1987), than the cases relied on by applicant.

In conclusion, we find that, in view of the substantial similarity in commercial impressions of applicant's and registrant's marks, their contemporaneous use on essentially identical goods is likely to cause confusion as to the source or sponsorship of such goods.

---

<sup>6</sup> "Cimera" is defined in the *Larousse Diccionario Español-Inglés* (1995) as "[...de escudo] crest...", and "escudo" is defined as, inter alia, "shield," in the *Oxford Spanish Desk Dictionary* (1997) and *Random House Latin-American Spanish Dictionary* (1997).

**Ser No. 75/150,300**

Decision: The refusal under Section 2(d) of the Act is moot as to Registration No. 1,701,167 and affirmed as to Registration No. 582,705.

E. J. Seeherman

C. E. Walters

G. F. Rogers

Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board